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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/155,849	10/02/1998	KIRKOR SIRINYAN	MO-4857/LEA	9230

34469 7590 06/26/2003  
BAYER CROPSCIENCE LP  
100 BAYER ROAD  
PITTSBURGH, PA 15205

EXAMINER  
LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616  
DATE MAILED: 06/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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27

DATE MAILED:

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

Responsive to communication(s) filed on 4/11/03

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1, 3-6 is/are pending in the application.

Of the above, claim(s) 4-6 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1, 3 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of Reference Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

We note the Filing receipt states this is a 371, please, if this is true, so insert @  
p.1 after title.

Newly submitted claims 4-6 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: These claims are to patentably distinct and independent invention; the process is not the only one for obtaining a coating on a particle, while methods of controlling insects can be done with alternative composition; and further determination would need be made as to support for such methods, all resulting in an added burden on examiner for examination and search of the new invention. Finally, the composition is not seen as novel, so the process per se and method would not be allowable.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 4-6 stand withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ackerman, EP 0029626 – B1 in view of Woodburn et al EP 0659341A1.

Ackerman, of record, provides analogs as applicant points out, of the claim 1 compound. Applicants' preferred compounds ~~included~~<sup>are</sup> cypermethrin and deltamethrin; Ackerman has them, too (b) and (c) respectively, on p.2; thus, solids, or ~~semi~~-solids; at least, finely divided, water insoluble normally solid (p.2 line 7, 8) as suspension concentrates in water, coated over a 1-10 micron carrier (p. 2, lines 53-59) of clay or Mixes of MgO and ~~Si~~O<sub>2</sub> (TALC) or aluminum oxide, and silicon dioxide (kaolinite), at the instant %; (see example 1, 60% water, .8% pyrethroid and 9 % formulation auxiliaries. This is almost the instant aqueous suspension. Woodburn shows the equivalence of the instantly claimed beta-cyfluthrin with applicants preferred pyrethroids cyfluthrin, beta, cyfluthrin, delta methrin, permethrin and cypermethrin, at p.2, line 55 – line 17, p. 3), Woodburn, like applicant, puts the pyrethroid in a solvent, acetone (p.4, line 22) and then evaporates to provide a solid product (p. 4, line 26-38), with formulation auxiliary, PVP. Inorganic carrier includes talc, kaolinite, silica's (p.6, lines 23-26).

It would have been obvious a person of ordinary skill in the art at the time the invention was made desiring to utilize pesticides of pyrethroids, to use Ackerman's compositions, with an equivalent pyrethroids as shown by Woodburn to include beta cyfluthrin. Motivation to choose a particular pyrethroid, would be obvious: choose the compound most effective to the target pest species of concern.

Applicant's arguments filed on 4/11/03 have been fully considered but they are not persuasive. Applicant's arguments are persuasive as to the 112 rejections, in accord

with the now presented claim language. Note, however, there is no clear identification of the amount of active and the amount of carrier and the amount of free active.

Applicants' arguments are to allowance by EP office, however, that office ~~as novel~~, in the PCT EP 97/01568 application, has identified the concept and the issue before us is whether specifying the particular form is novel. Applicants' arguments are for the solid, but specify differences between cyfluthurin and beta cyfluthrin – yet, applicant prefers both, Woodburn shows equivalency and, see attached, CAS search shows the same compounds as isomers and in a mix we fail to see any non obvious or novel distinction as claimed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. JP 1279802.

See also: acetone – pyrethroid applied to carrier acid dried is the instant concept.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shep Rose whose telephone number is (703) 308-4609. The examiner can normally be reached on Monday, Tuesday and Thursday from 6 AM to 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel can be reached on (703) 308-4725. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-3592 for After Final communications.

Art Unit: 1614

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.



Levy/LR  
June 17, 2003

NEIL S. LEVY  
PRIMARY EXAMINER